UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff,	Case No. 06cr0326-BTM
vs.	
GENARO SMITH-BALTIHER,	San Diego, California
	July 24, 2006
	3:00 p.m.

Plea and Sentencing

BEFORE THE HONORABLE BARRY TED MOSKOWITZ
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:
Carol C. Lam
Christopher M. Alexander
Assistant United States Attorney
880 Front Street
San Diego, CA 92102

For the Defendant:
Federal Defenders
Shereen J. Charlick
225 Broadway
San Diego, CA 92101

Official Reporter:
Barbara Harris CM/RPR/CRR
880 Front Street
San Diego, CA 92101
619-990-3116

a citizen of?

THE DEFENDANT: I thought the United States, but then I was born in Mexico so I just happened to lie to him.

THE COURT: Well, I'm a little confused. Did you think that you were a U.S. citizen? 16:25:43

THE DEFENDANT: No, your Honor.

THE COURT: And what country are you a citizen of?

THE DEFENDANT: I am born in Mexico and raised in San Diego, California.

THE COURT: And have you ever applied for 16:25:55 citizenship in the United States?

THE DEFENDANT: No, your Honor.

THE COURT: Did you once have a green card?

THE DEFENDANT: No.

THE COURT: So you were here -- someone brought you 16:26:01 here illegally?

THE DEFENDANT: I came by my own self.

THE COURT: And you didn't get any documents to stay here?

THE DEFENDANT: No, other than a Social Security 16:26:12 and a driver's license.

THE COURT: And there has been some question as to whether your mother was born in New Mexico, and, if so, whether you had derivative citizenship.

THE DEFENDANT: I didn't have that thought in mind, 16:26:28

but I still was thinking that I was going to lie to the officer.

THE COURT: So you thought your mother might have been born in New Mexico?

THE DEFENDANT: Yes. 16:26:36

THE COURT: Did you believe that you were born in Mexico or the United States?

THE DEFENDANT: I believed in Mexico because I have a birth certificate from there.

THE COURT: From Mexico? 16:26:47

THE DEFENDANT: Right.

THE COURT: So there was -- you did not believe that you were born in the United States?

THE DEFENDANT: No, your Honor.

THE COURT: And did you believe at the time that 16:26:56 you made the statement on February 22nd, 2002 that the residency requirements for your mother had been established for derivative citizenship for you?

THE DEFENDANT: No.

THE COURT: So when you made the statement that you 16:27:10 were a United States citizen, you believed at that time that that was a false statement?

THE DEFENDANT: Yes.

THE COURT: What is the status of his derivative citizenship claim? 16:27:22

MS. CHARLICK: Presently we do not believe we can establish the derivative citizenship claim because of the residency requirement.

THE COURT: So there is no evidence that he is a derivative citizen? 16:27:34

MS. CHARLICK: No. There is some conflicting evidence, but we don't have anything that we can really present. There were statements made many years along, but presently, no.

THE COURT: And there is conflicting evidence as to 16:27:45 whether his mother was even born in the United States?

MS. CHARLICK: There is conflicting evidence as to that point.

THE COURT: Now, one of the defenses that you were raising was a legal defense that the government was 16:27:54 intentionally trying to deport your mother or have her deported or removed from the United States to hurt your case.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand by pleading guilty 16:28:09 you are waiving, giving up that defense?

THE DEFENDANT: Yes, your Honor.

THE COURT: And that motion will be denied as moot, that is, it's no longer necessary to decide the motion?

THE DEFENDANT: Yes, your Honor. 16:28:19

THE COURT: And you could not come back and later on say, "Well, the government pressured my mother to leave or was improper in making my mother leave the United States."

Do you understand that?

THE DEFENDANT: Yes, your Honor. 16:28:32

THE COURT: Or in deporting her.

THE DEFENDANT: I understand.

THE COURT: You couldn't come back and say that.

THE DEFENDANT: I understand.

THE COURT: You would be waiving, giving up your 16:28:38 right to appeal or attack this sentence on any of those grounds.

Do you understand that?

THE DEFENDANT: Yes. I understand.

THE COURT: And you are making this choice freely? 16:28:47

THE DEFENDANT: Yes, your Honor.

THE COURT: Mr. Alexander, do you think I should ask him anything else?

MR. ALEXANDER: Your Honor, I just ask that the court repeat the factual basis as indicated in the plea 16:28:57 agreement on page two.

THE COURT: So you agree that you are not a citizen of the United States and you don't have derivative citizenship through your mother or father; correct?

THE DEFENDANT: Right, your Honor. 16:29:15

THE COURT: And that you were deported from the United States on March 5th, 1996?

THE DEFENDANT: Yes, your Honor.

THE COURT: And that was a lawful deportation order? 16:29:22

THE DEFENDANT: Yes.

THE COURT: Do you agree, Ms. Charlick?

MS. CHARLICK: I do agree. That is actually not really an element of the 911, but it does have relevance for the sentencing, but yes, I agree. 16:29:31

THE COURT: And that you were physically removed from the United States on August 25th, 1999?

THE DEFENDANT: Yes, your Honor.

THE COURT: Near Laredo, Texas?

THE DEFENDANT: Yes, your Honor. 16:29:40

THE COURT: And that on February 22nd, 2002 you attempted to enter the United States at the San Ysidro port of entry?

THE DEFENDANT: Yes.

THE COURT: And then on February 22nd, 2002 you stated to Inspector Reya, who was in the performance of his official duties, that you were a United States citizen? 16:29:50

THE DEFENDANT: Yes.

THE COURT: And you told him that you were born in San Diego, California? 16:30:01

THE DEFENDANT: Yes, your Honor.

THE COURT: You specifically said that you were a United States citizen?

THE DEFENDANT: Well, he asked me, he asked, "Where were you born?" 16:30:10

And I said, "San Diego."

And then he said, "So what's your citizenship?"

And I said, "U.S."

And then he said, "Go to secondary inspection."

THE COURT: Okay. And then on February 2nd, 2002 16:30:21 did you know that you were not a citizen of the United States?

THE DEFENDANT: Yes, I knew, your Honor.

THE COURT: And then on February 22nd, 2002 did you know that your false claim to United States citizenship was 16:30:32 material to Inspector Reya's decision because the representation could have influenced Reya's decision to further check into to your nationality status?

THE DEFENDANT: Yes, your Honor.

THE COURT: Anything further? 16:30:46

MR. ALEXANDER: No, your Honor. Thank you.

THE COURT: Do you still wish to plead guilty?

THE DEFENDANT: Yes, your Honor.

THE COURT: I accept your plea. I find that you are competent and capable of entering the plea, you have done 16:30:52

CERTIFICATION

I hereby certify that I am a duly appointed, qualified and acting official court reporter for the United States District Court; that the foregoing is a true and correct transcript of the proceedings had in the aforementioned cause; that said transcript is a true and correct transcription of my stenographic notes; and that the format used herein complies with the rules and requirements of the United States Judicial Conference.

Dated: December 13, 2007 at San Diego, California

Barbara Harris, Official Reporter